

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MARCUS D. WHITE,

Petitioner,

v.

CASE NO. 2:08-CV-00979

JUDGE MICHAEL H. WATSON

MAGISTRATE JUDGE E.A. PRESTON DEEVERS

**WARDEN LEBANON
CORRECTIONAL INSTITUTION,**

Respondent.

ORDER

On November 5, 2010, Petitioner filed a motion for a sixty day extension of time to file his notice of appeal of the Court's October 27, 2010 final judgment of dismissal of his § 2254 petition.

For the reasons that follow, Petitioner's Motion, Doc. No. 30, is **DENIED**.

As grounds for his request, Petitioner states that he did not receive notice of the final judgment of dismissal until "on or about" November 2, 2010, and needs a sixty day extension of time for "proper litigation." *See id.*

Under Rule 4(a)(1) of the Federal Rules of Appellate Procedure, Petitioner must file a notice of appeal within thirty days. This time period is mandatory and jurisdictional. *United States v. Perry*, 360 F.3d 519, 523 (6th Cir. 2004), quoting *United States v. Christunas*, 126 F.3d 765, 767 (6th Cir. 1997); *see also Intera Corp., et al., v. Henderson III, et al.*, 428 F.3d 605, 611 (6th Cir. 2005); *Peake v. First Nat'l Bank & Trust*, 717 F.2d 1016, 1018 (6th Cir. 1983); *United States v. Means*, 133 F.3d 444, 448 (6th Cir. 1998).

A District Court may extend the time period required to file an appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

Fed. R. App. Pro. 4(a)(5)(A),. “No extension under . . . Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.” Fed. R. App. Pro. 4(a)(5)(C).¹

Petitioner has failed to allege either good cause or excusable neglect justifying an extension of time to file his appeal. *See United States v. Thompson*, 82 F.3d 700, 702 (6th Cir. 1996).

Therefore, petitioner’s request for an extension of time to file his notice of appeal, Doc. No.

¹ Under Rule 6 of the Federal Rules of Appellate Procedure, a District Court may reopen the time period for filing a notice of appeal:

for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

Plainly, such are not the circumstances here.

30, is **DENIED**.²

IT IS SO ORDERED.

November 9, 2010

/s/ Elizabeth A. Preston Deavers

Elizabeth A. Preston Deavers
United States Magistrate Judge

² The Court notes that the period for Petitioner to timely file a notice of appeal has not yet expired.